April 11, 2022

The Hon. Rohit Chopra
Comment Intake – Fee Assessment
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services (Docket No.: CFPB-2022-0003)

Dear Director Chopra:

The American Financial Services Association ("AFSA")[1] is pleased to have the opportunity to comment on the Consumer Financial Protection Bureau's ("the CFPB" or "Bureau") request for information ("RFI") regarding fees. Financial services companies offer a wide range of products as they compete for consumers' business. These products help hardworking Americans in many ways, including to: meet unexpected expenses, buy vehicles, finance a child's college education, and pay for the family's first home. Continued access to a variety of affordable financial products and services is essential for American consumers and families.

AFSA is a signatory to a joint trade association comment letter filed by ten financial trade associations on April 11, and we commend that comment to the Bureau.

While our fellow signatories are predominantly federally regulated, a preponderance of AFSA member companies are non-bank finance companies that operate according to state law. This letter, therefore, focuses on the impact of the RFI on our members and the states that license and regulate them. We explain the following:

1. State law has long recognized that reasonable fees on the consumer credit market are appropriate;
2. State and federal disclosure requirements have created a fair and competitive marketplace;
3. The RFI reflects no consultation with the states; and
4. Fees, consumer behavior, and the impact of lost cost recovery.

Before answering the RFI, we address three overarching issues. *First*, the Bureau lacks the statutory authority to regulate rates. *Second*, there is no need to regulate fees in the consumer credit marketplace because there is already robust competition for consumers' business and broad consumer choice in the market.

[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The Bureau lacks the statutory authority to regulate rates: The "limitations on authorities of the Bureau; preservation of authorities" provision states that the Consumer Financial Protection Act "shall [not] be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law."[2] This RFI seeks comments on fees. Fees and rates are inexorably intertwined. The states, over the years, have added or reduced fees that licensed lenders may charge in order to offset costs of doing business by licensees. The fees are intended to produce income for licensees without raising or altering state rates. Thus, regulating fees is a way of regulating rates, which the CFPB is prohibited from doing. The CFPB's RFI, therefore, exceeds the CFPB's authority.

There is no need to regulate fees in the consumer credit marketplace because there is already robust competition for consumers' business and broad consumer choice in the market: To the extent that the CFPB is concerned that, "consumers can only realize the benefits of competition if companies transparently advertise the true price of their products and services,"[3] and "the full price is subject to the competitve process,"[4] we answer that in the financial industry, lenders do transparently advertise the true price of their products and the full price is already subject to the competitive process.

There are layers of federal and state disclosure requirements precisely designed to transparently disclose the price of products and allow customers to shop around and realize the benefit of competition, many of which are forms promulgated and subject to rulemaking by the CFPB. Disclosures allow customers to compare the upfront and transactional prices of products, which allows customers to choose products that will suit their needs and their expectation of how they will use the product. These disclosure requirements distinguish these costs from the "junk" resort and ticket fees described in the blog post, where the concern is that the required upfront cost is not clearly disclosed and consumers cannot meaningfully shop and compare prices.

Notwithstanding, we turn now to the substance of our response to the RFI.

State law has long recognized that reasonable fees on the consumer credit market are appropriate.

The states spearheaded consumer financial protection with state law statutes that originate far before federal regulation. For decades, financial consumer protection has been within the province of the states and reflect the states' judgments of what works for their citizens. The slew of federal legislation mandating additional disclosures and other protections that has been enacted in the ensuing decades serves to supplement these multitude of state laws. As a result, the consumer financial services industry is highly regulated, unlike the other industries cited in the RFI.

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[2] 12 U.S.C. § 5517(o).
[3] 87 Fed. Reg. 5801.
[4] *Ibid.*

Numerous federal statutes and their implementing regulations are predated by many state laws. The Truth in Lending Act, for example, was initially enacted in 1968; the Electronic Funds Transfer Act became law in 1978; the Truth in Savings Act was enacted in 1993; and the Credit Card Accountability Responsibility and Disclosure Act became effective in 2009. (All of these federal laws impose robust disclosure requirements relating to fees for consumer financial services products.)

In contrast, work on the Uniform Small Loan Act—the predecessor of today's state installment lending and sales finance statutes—began in 1910, with states soon enacting such model consumer financial protection legislation.[5] For example, the 1925 Tennessee Small Loan Law contained a maximum interest rate while allowing a monthly fee of no more than three percent to investigate the "financial standing of the applicant, investigating the security, title, *etc*., and for other expenses and losses of every nature whatsoever, and for closing the loan."[6] In 1937, showing, even then, that states regularly update their law to reflect changing market conditions, Tennessee reduced the monthly fee to one percent.

Today, states continue their early work in the consumer financial services marketplace by establishing by statute a number of the fees CFPB references, including late fees, overdraft, convenience or surcharge fees, fees for nonsufficient funds, and fees charged at mortgage closings. Carleton's *The Cost of Personal Borrowing* in the United States[7] lists the statutory and regulatory maximum rates imposed for all fifty states as it relates to consumer credit. The publication contains 395 separate credit classifications. It has been Carleton's experience that each credit classification generally allows anywhere from three to six additional charges. In the appendix, we list twenty-three states with laws relating to fees provided by Carleton, along with a sample state statute relating to fees.

As you can see from the appendix, these fees vary by state. For example, in the case of late fees, states often set the fee amount[8] to how many days late the account must be to trigger a fee,[9] or

[5] Massachusetts enacted consumer credit legislation in 1911, followed by New Jersey in 1914. *See:* Hubachek, F.B., 1938. *Annotations on Small Loan Laws, based on the sixth draft of the Uniform Small Loan Law, New York*: Russell Sage Foundation, p. 192.
[6] *Ibid*., p. 92.
[7] *The Cost of Personal Borrowing in the United States* is produced by Carleton. (https://www.carletoninc.com) Carleton is a leading provider of financial calculation software, loan origination compliance support, and document delivery software. Based in South Bend, IN, Carleton has over 50 years of leadership within the rapidly-changing regulatory industry. Carleton's founder, Joseph C. Pitts, participated as a member of the industry advisory board working with the Federal Reserve Board of Governors during the creation of Regulation Z to implement the Truth-in-Lending Act in 1969. Carleton participated in the same capacity during Truth-in-Lending Simplification 10 years later and the Carleton Research Department played an instrumental role in the creation of Appendix J to Regulation Z that outlines the rules for computing a proper annual percentage rate.
[8] For example: 5% of a delinquent installment under Ariz. Stat. Ann § 6-635(A0(1) versus 2% of a delinquent installment under KY. Rev. Stat. Ann. §§ 286.4-530(4), 286.4-533(5).
[9] For example: 10 days under Neb. Rev. State. Ann. § 45-1024(20(d) versus 7 days under KY. Rev. Stat. Ann. §§ 286.4-530(4), 286.4-533(5).

provide that no late fee may be charged at all.[10] The minimum and maximum charges for late fees are also often set by statute.

Unlike the oft-gridlocked Congress, states do not move at a glacial pace, but frequently update their laws based upon current market environments and the needs of their citizens. For example, in March this year: Indiana passed SB 383 which amended the Indiana Uniform Consumer Credit Code governing finance charges for consumers loans, Maine passed HB 1386 which amended provisions related to abandoned motor vehicle storage fees, and the South Carolina Department of Consumer Affairs published changes to certain dollar amounts in the South Carolina Consumer Protection Code. Elected state legislatures across the country debate, vote, and set fees that they deem fair and appropriate.

The CFPB should not ignore the states' determination of what works for their citizens under existing robust regulatory regimes.

State and federal disclosure requirements have created a fair and competitive marketplace.

Disclosure requirements facilitate consumer choice and competition. So, while we agree with the CFPB that fees should be disclosed—a matter within the CFPB's jurisdiction—clear and upfront disclosure of fees is already required under numerous state and federal laws. Creditors must disclose many fees in retail installment sales contracts and promissory notes that the consumer must review and sign. Whether state or federally regulated, many fees must be specified and disclosed to the customer in the contract—like any other term or condition—which, again, the customer must review and sign.[11]

Congress and the states have repeatedly chosen to use disclosure requirements to regulate consumer financial marketplace participants and to protect consumers. For example, the Fair Debt Collection Practices Act prohibits any fee that is not disclosed in a consumer's underlying loan agreement.[12] This and other disclosures allow consumers to review the applicable benefits and fees of consumer financial products and select the product that best meets their needs.

This choice, by Congress and the states across different consumer financial product categories, allows consumers to make informed decisions about the products that best meet their own needs and goals. Disclosures enable consumers to avoid surprises and facilitate competition in the marketplace by enabling informed decisions between providers.

By mischaracterizing disclosed and regulated fees as "junk fees," and ignoring robust disclosure laws, the CFPB undermines states' rights and authority. Indeed, states have recognized these fees as legal and legitimate, enabling them to protect their consumers while making the regulated lending space possible.

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[10] New York Banking Law Article 9 §§ 340-361.
[11] The need to reduce important contracts to writing dates to the Cavalier Parliament's Act for Prevention of Frauds and Perjuries (29 Chas. 2 c. 3) enacted in 1677 and universally adopted by the states after the War of Independence.
[12] 15 U.S.C. § 1692f(1).

The RFI reflects no consultation with the states.

The RFI does not address state-licensed lenders and the thirty percent of the credit market they serve.

The CFPB, in its review of fees, should consider the potential impact of any regulatory option on state-licensed entities. For decades and decades, AFSA members, many of which are non-bank finance companies, have worked effectively with state regulators to comply with both state and federal consumer protection laws. These state regulators intimately understand local and regional markets and issues faced by consumers and lenders. This knowledge, along with their geographic proximity to a given lender and financial market, means that state regulators are often the first to identify emerging issues, practices, or products that may need further investigation or pose additional risk to the financial industry.

As the RFI is currently drafted, it appears that the CFPB is considering a major policy response on fees without:

- Any finding that existing state laws or regulations are inadequate;
- Estimating the number of state-licensed or supervised entities that might be affected;
- Describing the projected reporting, recordkeeping, and other compliance expectations that might accompany this policy response;
- Considering how it will impact the availability of products and services in the states in light of state and federal requirements; or
- Identifying the relevant state statutes, regulations, and enforcement proceedings that this potential policy response may duplicate, overlap, or conflict.

At a minimum, we urge the Bureau to consult with state regulators and enforcement agencies rather than ignoring an effective and longstanding regulatory authority over fees.

Existing authorities of the U.S. Supreme Court limit this subject matter to the states, absent extraordinary circumstances. The doctrine of state-federal comity requires that federal courts and regulators abstain from challenging state actions when a federal adjudication would be an unwarranted intrusion into a state's right to enforce its own laws in its own courts. The U.S. Supreme Court wrote forcefully about this doctrine in *Younger v. Harris* when it said that comity:

> "[I]s, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways."[13]

The *Younger* abstention doctrine only has two exceptions. One is in "extraordinary circumstances" that render state courts incapable of fairly and fully adjudicating the federal issues before it and

[13] *Younger v. Harris*, 401 U.S. 44 (1971).

create a pressing need for immediate federal equitable relief. The second exception is narrow and exists where a state actor acts in bad faith. The CFPB has shown no such extraordinary circumstance.

Fees, consumer behavior, and impact of lost cost recovery.

The RFI not only fails to recognize that fees for consumer financial products are established by statute and are clearly and adequately disclosed, but it also fails to recognize that many fees are transactional fees that are assessed based on customer choice and behavior, which are clearly disclosed and avoidable by the consumer.

For example, customers can avoid late fees, overdraft fees, nonsufficient fund fees, convenience or surcharge fees, out-of-network ATM fees, *etc*., by either paying on time or not choosing the service incurring a fee. Conversely, if a lender can no longer charge a fee for service, the CFPB cannot simply assume the service will continue at no cost. It may well no longer be offered.

In this regard, the RFI shows no understanding that fees serve numerous purposes. Fees allow companies to offset costs associated with certain customer actions and to mitigate the risk associated with certain product features. For example, fees can help offset increased costs from late-paying consumers, such as the costs to send reminder notices and reminder phone calls. Fees also serve to discourage violating contractual terms of the agreement or using a product in an unintended way, both actions that can create significant default risk. Timely payment also helps consumers establish good repayment history. Paying on time can help consumers avoid additional interest accruing on unpaid funds, future default on debt, and negative credit reporting, if applicable. In this way, fees can encourage good financial behavior and benefit consumers while remaining subject to the competition of the financial services marketplace and the extensive disclosure requirements.

The RFI and accompanying CFPB media wrongly presume eliminating or building transactional fees into upfront pricing will automatically benefit consumers. The CFPB does not point to data that demonstrates this premise. The likely unintended consequence of eliminating fees would be to reduce competition and consumer choice. As a recent Wall Street Journal editorial pointed out:

> "Prices set by producers are signals, and consumers whisper feedback billions of times a day by buying or not buying products. Mess with prices and the economy has no guide. The Soviets instituted price controls on everything from subsidized 'red bread' to meat, often resulting in empty shelves. President Franklin D. Roosevelt's National Recovery Agency fixed prices, prolonging the Depression, all in the name of 'fair competition.'"[14]

[14] Kessler, Andy. "Here Come the Price Controls." WSJ,.April 3, 2022. Available at: https://www.wsj.com/articles/here-come-the-price-controls-oil-reserves-rent-consumers-joe-biden-inflation-drugs-11648998374?mod=opinion_lead_pos8. The author goes on to say, "In 1971 President Richard Nixon announced, 'I am today ordering a freeze on all prices and wages throughout the United States.' We got new government entities:

In the consumer finance context, consumers of low income or with limited credit history will likely have fewer products to choose from under such a regime. Losing fee income could increase lender costs across the board and decrease expense recovery, as discussed above. If fees are eliminated or required to be spread across all purchasers in an up-front fee, the cost of credit will rise because lenders will no longer have this offset. Consumers as a whole may end up subsidizing a subset of consumers whose conduct makes providing financial services more costly. Misplaced restraints on fees may also change the economics of certain products which may threaten their viability in the marketplace. This is because fees, along with other pricing and product features, are one component of the wide array of competitive products that financial services companies offer to consumers.

The CFPB must avoid the kind of sweeping policy change that this RFI signals without first undertaking a rigorous, data-driven analysis of consumer finance markets and consumer behavior as it pertains to fees. Only if that analysis demonstrates clearly that the benefits of a specific policy change outweigh the costs should the CFPB move forward with action. If the CFPB were to simply move forward by fiat without rigorous, data-driven analysis, it could disrupt the economic viability of fair products that many consumers rely on, likely impacting the very consumers whose access to credit hangs in the balance.

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AFSA appreciates the opportunity to provide feedback on the Bureau's RFI. Please contact me by phone, 202-776-7300, or email, cwinslow@afsamail.org, with any questions.

Sincerely,

Celia Winslow
Senior Vice President
American Financial Services Association

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a Pay Board and a Price Commission. Americans paid for this mistake for another decade. Farmers drowned chickens rather than send them to market. Store shelves emptied. Price controls contributed to long lines at gasoline stations in 1973 during the Arab oil embargo. It's pretty simple: When you freeze prices too low, producers stop producing. Price controls don't work. Never have, never will."

APPENDIX

State Allowable Fees
Carleton Cost of Personal Borrowing in the United States
Publication 830
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Financial Publishing Company
A Division of Carleton, Inc.

A. *State Regulated Small Loan Fees*

Alabama – interest surcharge that is 6% of the amount financed.

California –
Loans <$2,500: Administrative Fee of 5% of principal or $50, whichever is less.
Loans > $2,500: Administrative Fee of 5% of principal or $75, whichever is less.

Florida – documentary stamp tax that is $.35 per $100 or fraction there of the principal amount.

Georgia – origination fee of: 8% of the first $600 of loan principal plus 6% on the excess.
Closing Fee – 4% of the face amount.

Indiana – origination fee of:
$75 if principal is $2,000 or less.
$150 if principal exceeds $2,000 up to and including $4,000.
$200 if principal exceeds $4,000.

Kansas – origination fee is the lesser of 2% of the amount financed or $100.

Kentucky – loan processing fee 5% of original principal amount up to $150 maximum.

Louisiana – origination fee $50; documentary fee $20.

Massachusetts – administrative fee $20.

Michigan – loan processing fee 5% of proceeds $400 maximum.

Minnesota – administrative fee $25.

Mississippi – closing fee 4% of total of payments.

Missouri – origination fee 10% of principal $100 maximum.

New Hampshire – application fee, participation fee maximum $100.

North Carolina – processing fee $25 or 1% of cash advance.

Ohio - Tiered origination fee of:
Less than $500 = $15.
$500-$999.99 = $30.
$1,000 - $1,999.99 = $100.
$2,000 - $4,999.99 = $200.
$5,000 and larger = Greater of $250 or 1% of principal amount.

Oklahoma – allows for document preparation fees and closing fees.

Pennsylvania - service charge $1.50 per $50 or fraction thereof of face amount.

Tennessee – closing fee 4% of principal maximum $50; maintenance fee $5 per month.

Texas – administrative fee $100.

Virginia – processing fee of greater of 6% of principal maximum $150.

Washington – 4% of first $20,000 of principal 2% on the excess.

West Virginia – 2% of amount financed.

B. *Example of Authorized Additional Charges - Indiana Credit Code Allowed Additional Charges*

IC 24-4.5-3-202Permitted additional charges; skip-a-payment services; expedited payment services; debt cancellation agreements; insurance; GAP agreements

Sec. 202. (1) In addition to the loan finance charge permitted by this chapter, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) Official fees and taxes.
(b) Charges for insurance as described in subsection (2).
(c) Annual participation fees assessed in connection with a revolving loan account. Annual participation fees must:
(i) be reasonable in amount;

(ii) bear a reasonable relationship to the lender's costs to maintain and monitor the loan account; and
(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(d) With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:
(i) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.
(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.
(iii) Notary and credit report fees.
(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge.
(v) Appraisal fees.

(e) Notwithstanding provisions of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) concerning disclosure, charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to the debtor and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the loan finance charge. With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits.

(f) A charge not to exceed twenty-five dollars ($25) for each returned payment by a bank or other depository institution of a dishonored check, electronic funds transfer, negotiable order of withdrawal, or share draft issued by the debtor.

(g) With respect to a revolving loan account, a fee not to exceed twenty-five dollars ($25) in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars ($100) the maximum credit limit for the account established by the lender.

(h) With respect to a revolving loan account, a transaction fee that may not exceed the greater of the following:
(i) Two percent (2%) of the amount of the transaction.
(ii) Ten dollars ($10).

(i) A charge not to exceed twenty-five dollars ($25) for a skip-a-payment service, subject to the following:
(i) At the time of use of the service, the consumer must be given written notice of the amount of the charge and must acknowledge the amount in writing, including by electronic signature.
(ii) A charge for a skip-a-payment service may not be assessed with respect to a consumer loan subject to the provisions on rebate upon prepayment that are set forth in section 210 of this chapter.
(iii) A charge for a skip-a-payment service may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(j) A charge not to exceed ten dollars ($10) for an optional expedited payment service, subject to the following:
(i) The charge may be assessed only upon request by the consumer to use the expedited payment service.
(ii) The amount of the charge must be disclosed to the consumer at the time of the consumer's request to use the expedited payment service.
(iii) The consumer must be informed that the consumer retains the option to make a payment by traditional means.
(iv) The charge may not be established in advance, through any agreement with the consumer, as the expected method of payment.
(v) The charge may not be assessed with respect to any payment for which a delinquency charge has been assessed under section 203.5 of this chapter.

(k) A charge for a GAP agreement, subject to subsection (3).

(l) With respect to consumer loans made by a person exempt from licensing under IC 24-4.5-3-502(1), a charge for a debt cancellation agreement, subject to the following:
(i) A debt cancellation agreement or debt cancellation coverage may not be required by the lender, and that fact must be disclosed in writing to the consumer.
(ii) The charge for the initial term of coverage under the debt cancellation agreement must be disclosed in writing to the consumer. The charge may be disclosed on a unit-cost basis only in the case of revolving loan accounts, closed-end credit transactions if the request for coverage is made by mail or telephone, and closed-

end credit transactions if the debt cancellation agreement limits the total amount of indebtedness eligible for coverage.
(iii) If the term of coverage under the debt cancellation agreement is less than the term of the consumer loan, the term of coverage under the debt cancellation agreement must be disclosed in writing to the consumer.
(iv) The consumer must sign or initial an affirmative written request for coverage after receiving all required disclosures.
(v) If debt cancellation coverage for two (2) or more events is provided for in a single charge under a debt cancellation agreement, the entire charge may be excluded from the loan finance charge and imposed as an additional charge under this section if at least one (1) of the events is the loss of life, health, or income.

The additional charges provided for in subdivisions (f) through (j) are not subject to refund or rebate.

(2) An additional charge may be made for insurance in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

(a) with respect to insurance against loss of or damage to property or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender and stating that the debtor may choose the person, subject to the lender's reasonable approval, through whom the insurance is to be obtained; and
(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of the desire to do so after written disclosure of the cost of the insurance.

(3) An additional charge may be made for a GAP agreement, subject to the following:

(a) A GAP agreement or GAP coverage may not be required by the lender, and that fact must be disclosed in writing to the consumer.
(b) The charge for the initial term of coverage under the GAP agreement must be disclosed in writing to the consumer. The charge may be disclosed on a unit-cost basis only in the case of the following transactions:
(i) Revolving loan accounts.
(ii) Closed-end credit transactions, if the request for coverage is made by mail or telephone.
(iii) Closed-end credit transactions, if the GAP agreement limits the total amount of indebtedness eligible for coverage.
(c) If the term of coverage under the GAP agreement is less than the term of the consumer loan, the term of coverage under the GAP agreement must be disclosed in writing to the consumer.
(d) The consumer must sign or initial an affirmative written request for coverage after receiving all required disclosures.
(e) The GAP agreement must include the following:
(i) In the case of GAP coverage for a new motor vehicle, the manufacturer's suggested retail price (MSRP) for the motor vehicle.
(ii) In the case of GAP coverage for a used motor vehicle, the National Automobile Dealers Association (NADA) average retail value for the motor vehicle.
(iii) The name of the financing entity taking assignment of the agreement, as applicable.
(iv) The name and address of the consumer.
(v) The name of the lender selling the agreement.
(vi) Information advising the consumer that the consumer may be able to obtain similar coverage from the consumer's primary insurance carrier.
(vii) A coverage provision that includes a minimum deductible of five hundred dollars ($500).
(viii) A provision providing for a minimum thirty (30) day trial period.
(ix) In the case of a consumer loan made with respect to a motor vehicle, a provision excluding the sale of GAP coverage if the amount financed under the consumer loan (not including the cost of the GAP agreement, the cost of any credit insurance, and the cost of any warranties or service agreements) is less than eighty percent (80%) of the manufacturer's suggested retail price (MSRP), in the case of a new motor vehicle, or of the National Automobile Dealers Association (NADA) average retail value, in the case of a used motor vehicle.
(x) In the case of a GAP agreement in which the charge for the agreement exceeds four hundred dollars ($400), specific instructions that may be used by the consumer to cancel the agreement and obtain a refund

of the unearned GAP charge before prepayment in full, in accordance with the procedures, and subject to the conditions, set forth in subdivision (f).

(f) If the charge for the GAP agreement exceeds four hundred dollars ($400), the consumer is entitled to cancel the agreement and obtain a refund of the unearned GAP charge before prepayment in full. Refunds of unearned GAP charges shall be made subject to the following conditions:

(i) A refund of the charge for a GAP agreement must be calculated using a method that is no less favorable to the consumer than a refund calculated on a pro rata basis.

(ii) The consumer is entitled to a refund of the unearned GAP agreement charge as outlined in the GAP agreement.

(iii) The seller of the GAP agreement, or the seller's assignee, is responsible for making a timely refund to the consumer of unearned GAP agreement charges under the terms and conditions of the GAP agreement.

(g) Upon prepayment in full of the consumer loan:

(i) the GAP coverage is automatically terminated; and

(ii) the seller of the GAP agreement must issue a refund in accordance with subdivision (f).

(h) A lender that sells GAP agreements must:

(i) insure its GAP agreement obligations under a contractual liability insurance policy issued by an insurer authorized to engage in the insurance business in Indiana; and

(ii) retain appropriate records, as required under this article, regarding GAP agreements sold, refunded, and expired.

(4) As used in this section, "debt cancellation agreement" means an agreement that provides coverage for payment or satisfaction of all or part of a debt in the event of the loss of life, health, or income. The term does not include a GAP agreement.

(5) As used in this section, "expedited payment service" means a service offered to a consumer to ensure that a payment made by the consumer with respect to a consumer loan will be reflected as paid and posted on an expedited basis.

(6) As used in this section:

(a) "guaranteed asset protection agreement";

(b) "guaranteed auto protection agreement"; or

(c) "GAP agreement";

means, with respect to consumer loans involving motor vehicles or other titled assets, an agreement in which the lender agrees to cancel or waive all or part of the outstanding debt after all property insurance benefits have been exhausted after the occurrence of a specified event.

(7) As used in this section, "skip-a-payment service" means a service that:

(a) is offered by a lender to a consumer; and

(b) permits the consumer to miss or skip a payment due under a consumer loan without resulting in default.

Formerly: Acts 1971, P.L.366, SEC.4; Acts 1975, P.L.266, SEC.1. As amended by P.L.247-1983, SEC.16; P.L.139-1990, SEC.1; P.L.181-1991, SEC.3; P.L.14-1992, SEC.26; P.L.122-1994, SEC.19; P.L.45-1995, SEC.9; P.L.80-1998, SEC.6; P.L.213-2007, SEC.8; P.L.217-2007, SEC.7; P.L.153-2016, SEC.5; P.L.159-2017, SEC.11; P.L.69-2018, SEC.17; P.L.176-2019, SEC.16; P.L.211-2019, SEC.32; P.L.280-2019, SEC.2.

IC 24-4.5-3-203Repealed

Formerly: Acts 1971, P.L.366, SEC.4. Repealed by P.L.122-1994, SEC.122.